



Comptroller General
of the United States

904118

Washington, D.C. 20548

Decision

Matter of: Protective Enforcement Agency, Inc.

File: B-253836.2

Date: August 4, 1994

Maria Dell and Jeffrey P. Dell for the protester.
Patrick J. Martell, Esq., and John W. Rakow III, Esq.,
Pettit & Martin, for Security U.S.A., Inc., an interested
party.
Deidre A. Lee and Paul Brundage, National Aeronautics and
Space Administration, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Lowest-ranked offeror with highest evaluated cost in competitive range of six offerors is not an interested party to protest awardee's substitution of certain key employees where the awardee is the second-ranked offeror with the lowest proposed cost and several other offerors would be in line for award before the protester even if the issues raised were resolved in its favor.

2. Protester is not an interested party to allege an organizational conflict of interest where the protester is clearly not in line for award and fails to show how such a conflict prejudiced the other offerors between it and the awardee.

DECISION

Protective Enforcement Agency, Inc. (PEA) protests the award of a contract to Security U.S.A., Inc. under request for proposals (RFP) No. 2-35693 (AJB), issued by the National Aeronautics and Space Administration (NASA), Ames Research Center, for security and law enforcement services. PEA argues that Security, U.S.A. was improperly permitted to substitute key personnel after award. PEA also argues that NASA permitted an improper conflict of interest by including on its evaluation panel an outside contractor hired to prepare the solicitation's statement of work (SOW), that the outside contractor who prepared the SOW improperly solicited resumes for the successful contractor, that NASA's Inspector General (IG) failed to properly investigate these

allegations, and that the awardee submitted a below-cost offer intending to renegotiate its proposed rates after award.

We dismiss the protest.

Upon receipt of PEA's numerous challenges to this procurement for security services, NASA responded that PEA is not eligible to challenge the award to Security, U.S.A. because PEA would not be in line for award even if its protest were sustained. Specifically, NASA provided detailed source selection information showing that PEA's proposal was ranked sixth among the six offerors in the competitive range, and that PEA had the highest evaluated cost. Thus, NASA argues that PEA is not an interested party to protest award to Security, U.S.A. under our Bid Protest Regulations. See 4 C.F.R. § 21.0(a) (1994). In addition, NASA contends that PEA's protest is largely untimely, and raises several issues not reviewable by our Office.

Under the Competition in Contracting Act of 1984 and our regulations, a protester must qualify as an interested party before its protest may be considered by our Office. See 31 U.S.C. § 3553 (1988); 4 C.F.R. § 21.1(a). That is, a protester must have a direct economic interest which would be affected by the award of a contract or the failure to award a contract. 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0(a).

With respect to PEA's allegation that Security, U.S.A. was improperly permitted to name substitutes for two of its five key personnel, we agree that PEA is not an interested party to raise this issue. Given PEA's low ranking and high cost, PEA lacks the direct economic interest necessary to qualify as an interested party to challenge the award to Security, U.S.A. on this ground since even if we sustained the protest and recommended that the award be set aside, several other offerors would be in line for award before PEA. Under such circumstances, we will not consider the protest. General Marine Indus. of New York, Inc.; Todd Pacific Shipyards Corp., B-240059; B-240059.2, Oct. 18, 1990, 90-2 CPD ¶ 311.

With respect to PEA's other contentions--that NASA permitted an improper conflict of interest by including on its evaluation panel an outside contractor hired to prepare the solicitation's SOW, that the outside contractor who prepared the SOW improperly solicited resumes for the successful contractor, that NASA's IG failed to properly investigate these allegations, and that the awardee submitted a below-cost offer--PEA argues that our Office should disregard its standing in the competition because all of the offerors were prejudiced by the alleged improper actions. We disagree.

PEA's allegations do not raise the likelihood that PEA's relative standing would improve vis-a-vis the other offerors. Where such allegations do not raise such a possibility, a protester lacks the requisite direct economic interest necessary to be considered an interested party to raise these issues. Federal Information Technologies, Inc., B-240855, Sept. 20, 1990, 90-2 CPD ¶ 245. In addition, with respect to PEA's claim that Security, U.S.A. submitted a below-cost offer, PEA raises an issue our Office will not consider--i.e., an agency's affirmative determination that an offeror can perform the contract at the offered price. JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198.

As a final matter, we note that in its report responding to PEA's allegations, and outlining the results of the evaluation, NASA provided the results of an investigation by the agency's IG Office. Our review of these materials, including the IG report, leads us to conclude that even if we considered PEA's allegations on the merits, PEA has not shown that the agency acted improperly in conducting this procurement.

The protest is dismissed.

Christine S. Melody
Assistant General Counsel